

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Consumer Protection in the)	WC Docket No. 05-271
Broadband Era)	
)	

**REPLY COMMENTS OF
THE DIRECT MARKETING ASSOCIATION, INC.**

Background and Introduction

The Direct Marketing Association (“DMA”) welcomes the opportunity to submit reply comments as part of the Federal Communications Commission’s (“FCC” or “Commission”) proceeding regarding consumer protection in the broadband era.¹ This NPRM requests comment on how to protect the privacy of customers with respect to broadband Internet access providers, including whether to limit broadband Internet access providers from disclosing, without customers’ consent, “information about their customers that they learn through the provision of their broadband Internet access service.” 70 Fed. Reg. at 60260.

DMA member companies have a strong interest in consumer protections that afford consumers with confidence to recognize the tremendous potential and benefits of broadband technology. Broadband services and their corresponding applications are just in their infancy. DMA believes that to allow for realization of the full benefits of broadband technology, the Commission should proceed cautiously in this area and refrain from extending to providers of broadband Internet access services the types of privacy requirements for Customer Proprietary Network Information (“CPNI”) that are in the Communications Act.²

¹ Consumer Protection in the Broadband Era, Notice of Proposed Rulemaking, 70 Fed. Reg. 60259 (Oct. 17, 2005) (to be codified at 47 C.F.R. parts 63 and 64).

² 47 U.S.C. § 222.

DMA is the largest trade association for businesses interested in direct, database, and interactive marketing and electronic commerce. DMA represents more than 4,000 companies in the United States and 53 other nations. Founded in 1917, its members include direct mailers and direct marketers from 50 different industry segments, as well as the non-profit sector. Included are catalogers, financial services, book and magazine publishers, retail stores, industrial manufacturers, Internet-based businesses, and a host of other segments, as well as the service industries that support them.

DMA member companies have a major stake in the success of the Internet, and are among those benefiting from its growth. DMA member companies understand that the industry's success depends upon building consumer trust through meeting privacy expectations. Our members are aware that good privacy is good business, and that this fact will be a differentiator among competitive services.

The DMA does not believe that new FCC CPNI-like privacy protections in the broadband area are warranted for the following reasons:

- broadband services are different from telephony;
- sufficient Internet protection exists in the marketplace; and
- Federal Trade Commission ("FTC") authority through Section 5 and state consumer protection laws provide effective protection in this area.

Broadband services are different from telephony

As the Commission has long recognized, broadband services are unique and different from telephony. Our nation's communications infrastructure has just begun to fully experience the Internet revolution. The broadband services of today and tomorrow may look very different from those of traditional telecommunications carriers that provide solely voice telephony. Such broadband providers will offer converged media, communications, video, marketing, advertising and e-commerce capabilities that, until recently, were unimaginable.

The Commission should proceed cautiously prior to extending the CPNI protection aimed at limiting the sharing of destinations and recipients of phone calls to a broadband world that consists of entirely different types of consumer information.

Sufficient Internet privacy protections exist in the marketplace

Market forces already mandate that providers of broadband services afford consumer protections. In a highly competitive market, Internet service providers must compete by offering new product features and providing exceptional service. If a provider is not competitive, customers will switch to a direct competitor or substitute another provider's similar service based on an alternative technology.

Responsible information practices are an integral part of the competitive nature of these services. Broadband Internet service providers that do not adequately meet consumer expectations will lose customers to providers who address such expectations. Therefore, since privacy protection is a relevant competitive issue, broadband Internet access providers have a strong incentive to provide such protection.

Moreover, as the record indicates, and as highlighted by many commenters,³ there is no evidence of an identifiable abuse of consumer privacy by providers of such services. Currently, the market is functioning with success, and the Commission should refrain from exerting its authority to regulate in this area.

Limiting a broadband Internet access provider's use of customer information would have the effect of restricting marketing opportunities. Marketers rely on the rich customer information collected to tailor advertising to individual preferences. This is an effective means to target customers so that marketers can offer the products and services that are of the most interest to consumers. Without this valuable resource, consumers will lack the required information to make educated decisions in the market, thereby depriving consumers of the richest of Internet experiences.

In addition, consumers can rely on current mechanisms for privacy protection. Several technological solutions are available to consumers to protect data, such as privacy policies, private contracts, and state and federal consumer protection laws. DMA understands consumers' concerns regarding privacy and, as such, DMA has offered ethical and regulatory guidelines to marketers regarding the proper treatment of customer data. In fact, DMA has adopted Ethical Guidelines for its members that require the utmost respect for consumer privacy.⁴ In addition, DMA offers an educational section on its Web site to provide information to marketers interested in privacy protection.⁵

DMA is not alone in its appreciation for consumer privacy. It is an industry-wide practice for Internet service providers to adopt privacy policies and have such information available via their Web sites, and consumers may review a company's privacy policy prior to subscribing to its service. This allows consumers to make educated decisions when choosing a provider. Companies that do not appropriately

³ See Comments of CTIA–The Wireless Association, WC Docket 05-271, filed Jan. 17, 2006; Comments of Cingular Wireless LLC, WC Docket 05-271, filed Jan. 17, 2006; and Comments of the United States Telecom Association, WC Docket 05-271, filed Jan. 17 2005.

⁴ See The DMA Ethical Guidelines, available at <http://www.the-dma.org/guidelines/> (last visited February 15, 2006).

⁵ See The DMA, Privacy, available at <http://www.the-dma.org/privacy/> (last visited February 15, 2006).

protect data will suffer in the marketplace. To ensure a good reputation, companies have an incentive to adopt, honor, and enforce their privacy policies.

In addition, private agreements serve a valuable function in protection of consumer privacy. Prior to initiating service, customers typically are required to enter into a service agreement. These agreements contain express provisions pertaining to the use of customer data. These agreements typically afford consumers with the ability to determine the manner in which their data is used.

The FTC's consumer protection authority and state laws provide for effective protections in this area

In addition to the market forces described above, it is important to view this issue against the current backdrop of privacy protection. That is, the privacy practices of broadband providers already are subject to the FTC's authority to prevent unfair and deceptive practices in or affecting commerce.⁶ The FTC has relied upon this authority since the inception of the commercial Internet to ensure that companies keep their promises to consumers with respect to the commitments made in their privacy policies.⁷

In addition, state attorneys general have been active in ensuring consumer privacy protection through the authority granted to them through the mini FTC acts.⁸

Thus, there is no reason to impose additional, special regulations in this area given that there already exist strong consumer protections through the current privacy regulatory framework. Rather, the Commission should allow the marketplace to develop unfettered.

⁶ 15 U.S.C. § 45(a).

⁷ See http://www.ftc.gov/privacy/privacyinitiatives/promises_enf.html for a list of privacy-related cases brought by the FTC under its Section 5 authority.

⁸ See, e.g., Cal. Civ. Code §§ 17200, 17594, 815 Ill. Comp. Stat. Ann. 505/1-12, NY Gen. Bus. Law §§ 349 and 350.

* * *

DMA appreciates the opportunity to comment in this proceeding, and looks forward to continuing to work with the Commission on this issue.

Respectfully submitted,

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